

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL APPEAL NO. 226 OF 2004

Mahesh son of Sri Ramesh Chandra,
R/o village- Bhanga, P.S. Kichha,
District Udham Singh Nagar.

Appellant

Versus

State of Uttaranchal

Respondent.

Mr. N.C. Gupta learned counsel of the appellant.

Mr. G.S. Sandhu and Mr. P.S. Saun learned A.G.A. for the State.

HON'BLE J.C.S. RAWAT, J.

1. This is a criminal Appeal preferred by the appellant Mahesh against the judgment and order dated 26.06.2004 passed by the Additional Sessions Judge/I F.T.C, Udham Singh Nagar in S.T.No. 40/2004 by which he convicted and sentenced the appellant under section 363 IPC to undergo R.I. for two years and a fine of Rs.1,000/-. In default of payment of fine the appellant was ordered to undergo one-month additional imprisonment.

2. The facts, in brief, are that on 05.10.2003 at about 06.00 P.M the victim aged about 13 years daughter of Jaswant (PW1) went from her house to the house of Chavi Lal of the her village to see T.V. when she did not return for long time search was made but her whereabouts were not know. On the next day Damodar of the village of the victim met Jaswant (PW 1) and told that he had seen the victim going with Mahesh appellant at the railway crossing Pool Bhatta. The appellant had taken the victim without her consent.

3. A written report (Ex.Ka 1) was submitted by Jaswant (PW1) at P.S. Kichha, on 11.10.2003 at 08.05 p.m. On the basis of written report (Ex Ka 1) chik F.I.R. (Ex.Ka11) was prepared and a case was registered against the appellant vide G.D. entry (Ex ka 12). The investigation was conducted by S.I. Raja Ram Gupta (PW5). He visited the place of occurrence and prepared site plant (Ex Ka 7). The girl was recovered on 31.10.2003 and the Investigating Officer prepared recovery memo (Ex Ka 8) and the girl was given in the superdgi of her parents vide superdgi nama (Ex Ka 9).

4. The victim was examined by Dr. Geeta Sharma (PW3) Medical Officer, Primary Health Centre, Kichha on 31.10.2003 at 11.40 a.m. As per the Medical reports (Ex Ka 3, Ex Ka 4 and Ex Ka 5) the doctor opined that there was no evidence of rape and the age of the girl was 13 years.

5. The statement of the victim was recorded U/s 164 Cr.P.C. on 01.11.2003 by Special Judicial Magistrate, Rudrapur in which she stated the appellant took her away forcibly. After completing the investigation charge-sheet (Ex Ka 10) was submitted against the appellant.

6. Charge was framed against the appellant under section 363 and 366 IPC. The appellant pleaded not guilty and claimed to be tried.

7. The prosecution in support of its case examined PW1 Jaswant who proved (Ex.ka1) written report. PW2 is the victim. PW3 Dr. Geeta Sharma proved medical report (Ex Ka 4). PW4 Dr. R.K. Pandey proved X-ray report (Ex. Ka 5). PW5 S.I. Raja Ram investigated the case and roved site plan (Ex.ka7), and submitted charge sheet (Ex.ka10).

8. In the statement under section 313 Cr.P.C. the appellant has denied the allegations of the prosecutions and stated that he has been falsely implicated in the case.

9. On appreciation of the entire evidence on record the learned trial court found the appellant guilty under section 363 IPC and convicted and sentenced the appellant as above. The learned trial court acquitted the appellant U/s 366 IPC.

10. I have heard the learned counsel for the appellant and learned A.G.A. and perused the evidence.

11. Learned counsel for the appellant has not made submissions on the merits of the case and he has limited his arguments on the point of sentence only.

12. The learned counsel for the appellant contended that the learned trial court has not considered the gravity of the offence, the manner in which it is committed, the age, the sex of the accused, in other words, the sentence to be awarded will have to be considered in the background of the facts of each case and the court while doing so should bear in mind the principle of proportionality. The sentence awarded should be neither excessively harsh nor ridiculously.

13. In the instant case, the appellant kidnapped the victim from the guardianship of her parents. The appellant has been convicted and sentenced U/s 363 IPC to undergo R.I. for two years and a fine of Rs. 1,000/- Section 363 IPC provides punishment with imprisonment of either description for a term, which may extend to 7 years and shall also be liable to fine. The learned trial court came to conclusion after hearing the appellant on the point of sentence that it would be in the interest of justice by awarding the aforesaid imprisonment. While sentencing the appellant it has to

consideration while awarding the sentence to the appellant.

14. Having taken into consideration the said plea advanced on behalf of the appellant while allowing the appeal partly and affirming the conviction recorded by the trial court, I substitute the sentence awarded by the trial court against the appellant and direct the appellant to undergo rigorous imprisonment for a period of 13 months for the offence punishable U/s 363 IPC. I also maintain the fine of Rs.1,000/- awarded by the court below against the appellant. It is directed that if the fine amount is recovered, it shall be paid to the prosecutrix who was the victim of this offence, if the appellant defaults in the payment of the aforesaid fine he shall undergo a further period of two months imprisonment.

15. The appeal is allowed partly as above.

(J.C.S. RAWAT, J.)

November. 24, 2004